2.21.17
Commission's Secretary
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Re: WC Docket No. 06-210
CCB/CPD 96-20

Under the Administrative Procedures Act the FCC ONLY Resolves Controversies. There are NO Controversies Within the Scope of the 1995 Referred Controversy.

Petitioners: One Stop Financial, Inc., Winback & Conserve Program Inc., 800 Discounts, Inc., and Group Discounts, Inc. submit the following:

Judge Wigenton did not lift the stay because the case was in **circulation** at the FCC. Her Court did not understand that the FCC's January 12th 2007 Order determined Judge Bassler's 2006 referral on which obligations transfer under section 2.1.8 was not a controversy in 1995. This 2006 created controversy is outside the scope of the case and is thus moot.

Here are the facts why the FCC Commissioners Needed to Pull the Traffic Only Transfer Controversy Off Circulation:

The FCC has evaluated the case and has taken the case off circulation because AT&T's sole defense to stop a permissible 2.1.8 traffic only transfer was AT&T's reliance on section 2.2.4 fraudulent use. AT&T's sole defense of fraudulent use under section 2.2.4 was denied by the FCC. FCC Pg.10 para 13:

> "Because AT&T did not act in accordance with the **"fraudulent use"** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. **AT&T does not rely upon "any other provisions of its tariff"** to justify its conduct."

The DC Circuit Court did not find fault with the FCC's decision to deny AT&T's sole defense of fraudulent use and the DC Circuit **did not remand the case**. At that point the 1995 initiated case was over AT&T lost.

The DC Circuit Court agreed with the Inga Companies, AT&T, and Judge Politan that section 2.1.8 does allow traffic only, non-plan transfers, as ordered by CCI to PSE and Inga to PSE in January 1995. [1]

Here are the facts:

Judge Politan's Confirms AT&T sole defense was fraudulent use:

> On January 13, 1995, PSE and CCI jointly executed and submitted written orders to AT&T to transfer the 800 traffic under the plans CCI had obtained from the Inga companies to the credit of PSE. Only the traffic was to be transferred, not the plans themselves. In this way, **CCI would maintain control over the plans** while at the same time benefiting from the much larger discounts enjoyed by PSE under KT-516. AT&T refused to accept this second transfer on the ground that CCI was not the customer of record on the plans at issue, and thus could not transfer the traffic under those plans to PSE. **AT&T was further troubled** by the fact that if **only the traffic on the plans and not the plans themselves were transferred to PSE**, the liability for **shortfall and termination charges attendant thereto would then be vested in CCI**: an empty shell in AT&T's view." **(1995 Decision pg. 10 para 2**

AT&T's sole defense was fraudulent use under 2.2.4, there was no AT&T controversy under 2.1.8.[2]

Judge Politan in 1996 cited additional record evidence the 2.1.8 allowed traffic only transfers:

March 1996 Decision page 15 fn6.

> AT&T has authorized a fractionalization of the plan and traffic between other aggregators since the inception of the instant litigation. See H. Curtis Meanor's Letter and Attachments of December 15, 1995; Letter of December 21, 1995; Certification of Robert Collett; and Meanor Letter of January 29, 1196. **AT&T has submitted neither testimonial nor documentary evidence** to satisfactorily refute that representation. See, e.g., Letter of Frederick L. Whitmer, dated February 7, 1996.

The DC Circuit Court also understood 2.1.8 did allow traffic only, non-plan transfers.

The DC Circuit Decision stated on pg.8:

> Absent such reliance, the commission provides us with little reason why the plain language of Section 2.1.8 fails to encompass **transfers of traffic alone.**

[1] The Inga to PSE traffic only transfer was also not objected to in writing within the 15 days' period. Therefore, by law AT&T can't raise any defenses as to that transfer.

[2] In 1995 the first issue security deposit was resolved by Judge Politan's May 1995 Order.

and the DC Circuit Decision stated on pg.10:

> As the foregoing discussion indicates, we find the Commission's interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, and **not just transfers of entire plans.**

From 1995 through the DC Circuit Court, the DC Circuit Court, AT&T, the Inga Companies and Judge Politan agreed there was **no controversy or uncertainty** that:

(A)section 2.1.8 allowed traffic only transfers
and
(B) that for traffic only non-plan transfers the revenue and time commitment must stay with the non-transferred plan under section 2.1.8. Only on a PLAN transfer where 100% of the locations transfer do the plans revenue and time commitment transfer. **The only controversy** was whether section 2.2.4 fraudulent use could prevent a permissible 2.1.8 traffic only transfer or a Delete and Add account movement using section 3.3.1Q Bullet 4.

The following are just A thru G examples from hundreds of quotes from the record showing there was **never a controversy or uncertainty** between Judge Politan, AT&T and the Inga Companies that: (A) traffic can be transferred without the plan under 2.1.8 and (B) the revenue and time commitments must stay with petitioners non-transferred plan:

Here are the cold hard facts:

AT&T filed Tr8179 at the FCC on February 16th 1995 seeking to RETROACTIVELY change the terms and conditions of section 2.1.8. AT&T understood that section 2.1.8 itself did not contain language to force petitioners to do a **plan transfer** when substantial end-user locations were transferred without the plan.

The FOIA notes show that AT&T was advised by the FCC's R.L. Smith that the FCC would not allow AT&T to subjectively suspect whether a client would not meet its revenue commitment if it transferred away locations that were being used to meet the revenue commitment.

AT&T was not allowed to subjectively determine that it could force a plan transfer, to force the revenue and time commitments to transfer---when AT&T believed too much traffic is being transferred. In this particular case petitioners, had already met its fiscal year revenue commitment. The plans were also grandfathered from such penalties.

AT&T counsel Richard Meade 1996 Certification to Judge Politan conceded the FCC would not allow AT&T to retroactively change the terms and conditions of section 2.1.8, due to petitioners substantial traffic only, non-plan transfer:

> The FCC was concerned that the modified language in Section 2.1.8(c) would have had a broader effect than was needed to achieve AT&T's specific purpose, which was simply to clarify its existing right to prevent a location transfer intended to avoid payment of charges, and **so would constitute a "substantive tariff change".** (page 4 para 9)

AT&T did not want Tr8179 to go into effect prospectively as that would mean the Inga Companies January 1995 transaction would have been grandfathered----so AT&T pulled the retroactive Transmittal attempt in the 11th hour, to NOT face an adverse FCC determination. Obviously, if section 2.1.8's terms and conditions enabled AT&T to prevent substantial traffic only transfers, AT&T would NOT have attempted the retroactively change in the terms and conditions of 2.1.8.

The FCC's R.L. Smith determined AT&T's section 2.1.8 did not allow AT&T to decide when a traffic only transfer should be treated as a plan transfer. The FCC stated that AT&T should not be able to subjectively discriminate, so AT&T replaced Tr.8179 with Tr.9229. Tr9229 used an unbiased mathematical formula to determine how much security deposit against potential shortfalls an AT&T customer would have to post if it transferred away substantially locations; as those locations, may have been used to meet the non-transferred revenue commitment. AT&T thus conceded the revenue commitment stays with the non-transferred plan.

AT&T counsel Richard Meade 1996 certification to NJ District Court Judge Politan pg.7 para 15:

> "On October 26th 1995, AT&T Corp. filed Tariff Transmittal No 9229 with the FCC. Transmittal No 9229 addresses the problem implicated in the **CCI-PSE** transfer--- **the segregation of assets (locations) from liabilities (plan commitments)** **---** in the following manner.

Above AT&T counsel is conceding that when just end-user locations transfer--- but not the plan--- the liabilities (revenue and time commitments) stay with the non-transferred plan.

Meade certification to Judge Politan pg.7 para 16

> The Deposit for Shortfall Charges included in Transmittal No. 9229 is a **"new concept"** that meets **AT&T's business concern** more directly, without addressing the question of **intent.** Because this is **new,** it will **apply** only to newly ordered term plans, and so would **not be determinative** of the issue presented on the **CCI/PSE transfer**.

Above counsel Meade is addressing the FCC's concern that AT&T was attempting with the previous Tr8179 filing to subjectively measure INTENT of the former customer. AT&T counsel Meade conceded the October 26th 1995 change to 2.1.8 was new and was not determinative on petitioners January 1995 transfer.

Tr9229 did not mandate petitioners needed to post security deposits against potential shortfall of the revenue commitment because all **substantive** tariff changes are prospective. So the tariff in general applied to petitioners but the posting of security deposits.

The following is additional record evidence showing AT&T's position agreed with Judge Politan and petitioners that 2.1.8 allowed traffic only transfers and the revenue and time commitments must stay with the non-transferred plan:

CCI and the Inga Companies are the petitioners that sought to transfer end-user business locations, but not the plan to PSE:

> (A) Judge Politan March 1996 pg.17 fn. 7: "Indeed, **AT&T's own counsel** focused the issue by indicating that the tariffed obligations **"*involved herein*"** are all **tariffed obligations**, for which **"CCI, not PSE"** would be obligated.

> (B) AT&T counsel David Carpenter (11/12/04 DC Circuit ORAL Argument pg.12 Line 12 Now what obligations they are going to end up assuming **will vary depending** on what service is being transferred.

> (C) AT&T counsel David Carpenter 11/12/04 DC Circuit ORAL Argument pg.12 Line 12: Now what obligations they are going to end up assuming **will vary depending** on what service is being transferred.

The only time all the obligations transfer is when the PLAN is transferred not just End-User location traffic as David Carter agrees with the Inga Companies at the Third Circuit Court:

> (D)AT&T Counsel Carpenter during Third Circuit Oral (Pg. 15 line 9) We point out in our brief that there's a **distinction** between transfers of **entire plans**, and transfers of individual end-user's locations. That when the "**plan"** is transferred, **"all the obligations"** have to go along with it.

> (E)AT&T reply brief to DC Circuit Court pg. 9: "Section 2.1.8 "addresses" the transfer of end-user traffic ***without*** the associated liabilities."

> (F) ATT counsel Friedman to the FCC in 2003: As AT&T's customers-of-record, Petitioners were responsible for the tariffed shortfall and termination charges. Section 3.3.1.Q of AT&T FCC No 2 See also AT&T Further Comments filed April 2nd 2003 ("AT&T's Further Comments 2003") at 7-8.

(G) AT&T Counsel Fred Whitmer on 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **"lead account**" ---is transferred to PSE the shortfall and termination liabilities remain with Winback & Conserve, **isn't that correct?**

Inga: **Yes**

As you can see Mr Inga is agreeing with AT&T counsel Fred Whitmer that 2.1.8 allows traffic only transfers and the liabilities stay with the non-transferred plan. The above shows there was **no controversy or uncertainty** before Judge Politan over section 2.1.8. Mr Inga agrees with AT&T counsel that the termination and shortfall liabilities for failing to meet the non-transferred plans revenue and time commitment must stay with the non-transferred plan.

Mr Whitmer was asserting AT&T's sole defense of fraudulent use. Fraudulent use (section 2.2.4) was AT&T's assertion that the Inga Companies would not be able to meet its revenue and time commitment. AT&T bogusly asserted it would be short changed potential shortfall and termination charges for failing to meet the non-transferred revenue and time commitments---AT&T believed it had the right to invoke fraudulent use 2.2.4 to prevent what it agreed was a permissible 2.1.8 traffic transfer.

Judge Politan in March 1996 determined the Inga Companies ordered the plans prior to June 17th 1994 and thus were immune from these AT&T speculated liabilities, as the plans could be restructured/refinanced/discontinued without liability, at any time, to avoid shortfall and termination charges on the revenue and time commitments.

A) Judge Politan: "Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only "tangible" concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T**. March 1996 Politan Decision (page 19 para 1)

B) Judge Politan: **"**Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or

> subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff." May 1995 NJFDC Decision pg. 11
>
> C) Judge Politan: "In answer to the court's questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T." May 1995 NJFDC Decision pg. 24

Despite the record being replete with evidence that there was never a controversy regarding section 2.1.8's terms and conditions that the non-transferred plans revenue and time commitment does not transfer; AT&T pulls off an intentional fraud on the New Jersey Federal District Court Judge Bassler.

AT&T still agreed with petitioners that 2.1.8 allowed traffic only transfers but creates a new controversy in 2005 that the revenue and time commitment transfer on a traffic only non-plan transfer.

What happened was AT&T lost at the DC Circuit its sole defense of fraudulent use regarding the 1995 fraudulent use controversy. AT&T created a brand-new controversy in Judge Bassler's Court, post DC Circuit.

For the first time in the case AT&T asserted to Judge Bassler that on a traffic only transfer, tariff section 2.1.8, mandated that the revenue and time commitments **must also transfer.** Incredibly AT&T asserted to Judge Bassler -----and still asserts to Judge Wigenton today -----that AT&T's newly created defense in the **YEAR 2005** was its justification why it denied the CCI to PSE traffic only transfer, 10 years earlier in the **YEAR 1995!**

How was AT&T going to assert this nonsense when all the evidence showed that AT&T executives never mandated ----before or after the DC Circuit Decision ---that the non-transferred plans revenue and time commitment must transfer?

Evidence has been presented to the FCC record showing that AT&T counsel Frederick Whitmer in 1995 advised Judge Politan that AT&T had done **thousands of traffic only transfers,** and the revenue and time commitments did not transfer. That was the essence of AT&T's fraudulent use case! The obligations don't transfer –so how are petitioners going to meet their revenue commitments! AT&T Counsel asserted to Judge Politan as March 8th 1995 there were thousands of traffic only transfers among aggregators and AT&T can't produce one in which the plan commitments transfer:

> "But there are literally - - my guess is hundreds, if not thousands, of transfers that have happened **among aggregators** and aggregations plans." NJFDC Oral Argument pg. 53

How did AT&T counsel expect to pull off its intentional fraud?

Current Supreme Court Chief Justice John Roberts when he was sitting at the DC Circuit Court opened the door to the AT&T fraud. As DC Circuit Court Legal Director Martha Tomich explained and the DC Circuit Decision also states ---the DC Circuit by law can ONLY review what the FCC was asked to interpret. [3]

The controversy the FCC was tasked to interpret was whether section 2.2.4 fraudulent use could prevent traffic only from transferring without the plan transferring. The issue of **which obligations transfer** on a traffic only transfer, was NOT reviewable by the DC Circuit as it was not an FCC controversy; but Judge Roberts Decision **speculated** on the non-controversy of which obligations must transfer under section 2.1.8.

His decision misquoted the tariff language within section 2.1.8. The 2.1.8 tariff language said the "new customer must assume all obligations of the **former** customer." Obviously, you are only a **FORMER CUSTOMER** on that which you transfer. On a "traffic only" non-plan transfer--- you are not a **FORMER** CUSTOMER of AT&T, as you are KEEPING the non-transferred plan, and remain an existing AT&T customer. Common Sense!

If company A with 100,000 end-user locations and a $100 million revenue commitment were to transfer only 200 of its end-user locations with $50,000 of revenue--- the new customer obviously is not going to assume $100 million in revenue commitment with only having received $50,000 of revenue! Furthermore, under AT&T 2005 created "all obligations must transfer nonsense, the new customer would be financially responsible for assuming the BAD debt on the 9,800 locations NOT even transferred to it! Unbelievable screw up speculation on an issue outside the DC Circuit Courts review.

Not only did Judge Roberts opine on a NON-Controversy, Judge Roberts SIMPLY IGNORED the District Court Decision. The District Court Decision explicitly cited evidence that plan obligations (revenue and time commitment, don't transfer unless the plan transfers.

Judge Roberts even ignored AT&T's own counsel David Carpenter who was explicitly told Judge Roberts what obligations transfer **vary depending upon what service is transferred**. AT&T counsel David Carpenter 11/12/04 DC Circuit ORAL Argument pg.12 Line 12: "Now what obligations they are going to end up assuming **will vary depending** on what service is being transferred."

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[3] ---"The Communications Act **precludes us from addressing only those issues which the Commission has been afforded no opportunity to pass."** 47 U.S.C. Section 405(a)." (DC Circuit Decision in Plaintiffs initial brief pg. 10 fn1.

--- "How this enumeration affects the requirement that new customer assume "*all* obligations of the former Customer" (emphasis added) is **beyond the scope of our opinion**." **DC pg. 11 fn2**

---"We also do not decide precisely which obligations should have been transferred in this case, as this question was **neither addressed by the Commission** nor adequately presented to us." **DC Circuit Page 11**

So, AT&T post DC Circuit figured it will use the **credibility** of John Roberts in Judge Bassler's Court NJ Federal District Court, on an issue that was not reviewable by the DC Circuit Court, as the DC Circuit Decision was not a remand and not the original 2.2.4 fraudulent controversy.

1) Judge Bassler took over the case for Judge Politan in the NJFDC. AT&T misrepresented to Judge Bassler that the DC Circuit Court case was a remand. The DC Circuit Court Decision did not say it was a remand, as the only controversy of fraudulent use under section 2.2.4 was denied. As DC Circuit Legal Director Martha Tomich---If the DC Circuit Decision was a remand, it would say REMAND!

2) In Judge Bassler's Court in 2015 the "**former customer**" tariff language connotation had not yet been discovered by the Inga Companies. It simply had always been for all traffic only transfers that the revenue and time commitment must stay with the non-transferred plan. Only when the entire plan transfers with 100% of the Locations, does the revenue and time commitment transfer to the new AT&T customer.

What AT&T did in Judge Bassler's Court was to constantly misquote the "former" customer tariff language—AT&T counsels were involved in a cover-up. Instead of quoting the tariff language and using the word: "former" AT&T constantly substituted in its brief "the OLD PLAN" and "The Transferor"—as Judge John Roberts did in his Decision."

Incredibly, AT&T recently asserted to the FCC, that it was not covering up the word "former"- it was only "paraphrasing." Normally when someone paraphrases they take **lengthy content and make it shorter**------here AT&T took the word "former" and "paraphrased" it into the longer phrase "the OLD PLAN." It was simply an obvious cover-up.

Below are just a few from dozens of misquotes of the tariff by AT&T's counsels in Judge Bassler's Court and the FCC in 2007, prior to the tariff analysis being realized. The actual tariff language is "the new customers must assume all obligations of the **FORMER** customer." Former is an adjective that modifies the noun. But AT&T thought the word **former** was much too long of a word to use so it felt it needed to misquote the tariff:

> 1) "Thus, the second sentence of § 2.1.8B did not limit the sweepingly broad requirement that a **transferee** accept "all obligations" of the **transferor**."
> 2) the `new' customer in the transfer, did not assume all the obligations' of **the `old'** customer, CCI,"
> 3) "whether a proposed transfer of virtually all end-user WATS traffic, without a transfer of "all obligations" of the **transferor,** complies with § 2.1.8."
> 4) "ARGUMENT I. SECTION 2.1.8 REQUIRES A **TRANSFEREE** TO ACCEPT "ALL OBLIGATIONS" OF THE **TRANSFEROR** COMPANY, INCLUDING ANY OBLIGATION TO PAY SHORTFALL OR TERMINATION CHARGES."
> 5) "whether a **transferee's** refusal to accept all of a **transferor's** obligations satisfies § 2.1.8."

Imagine AT&T explaining this as it was just paraphrasing! This was no paraphrasing—it was an intentional attempt to cover-up the actual language of the tariff to pull off the fraud. Imagine AT&T expected the FCC staff and Federal Judge Wigenton to believe this---**without any evidence!!!**

If you are AT&T counsels, you must believe Judge Wigenton and the FCC are complete idiots to sell them on---"just paraphrasing"—without evidence! All the evidence shows the obligations don't transfer! All the former AT&T counsels (Meade, Whitmer, Fash, Barillari, Friedman) all asserted the plan obligations don't transfer. More incredible AT&T is still using the same law firms. It switched out the attorneys that argued that obligations don't transfer before it lost its "fraudulent use" defense to attorneys like Joseph Guerra of Sidley Austin that asserted to Judge Wigenton that "all obligations of the transferor must transfer. As usual it's the cover-up that often sheds light on the fraud.

4) The day after the "former" customer tariff analysis was filed at the FCC in 2007 and 12 years into the case---AT&T counsel Richard Brown, **suddenly**, out of the blue---called asking how much petitioners **wanted to settle!** Mr Brown incredibly advised Judge Wigenton that her Court should pay no attention to this timing of AT&T begging to settle on condition that ethics violations will not be pursued! Imagine AT&T counsel believing that Judge Wigenton (who was entrusted with the "NJ Bridgegate Case") is that foolish enough to recognize the AT&T counsels cover-up!

Obviously, AT&T has ZERO EVIDENCE to support its new assertion that revenue and time commitments transfer on a traffic only transfer under 2.1.8. Judge Bassler made a key error in not understanding that the DC Circuit Decision was NOT A REMAND and made another error in not reading the FCC Decision that stated AT&T's only defense of fraudulent use was denied.

Judge Bassler's Court did state that it appears that all other AT&T aggregators are being allowed to transfer traffic without having to transfer the revenue and time commitment. Judge Bassler noted that even if Petitioners lost the case it would appear AT&T violated section 202 of its tariff due to discrimination.

Judge Bassler Oral argument pg. 21 line 9 that confirms the legitimacy of the discrimination as claims. Judge Bassler speaking with AT&T counsel Joseph Guerra states that even if AT&T won at the FCC, the petitioners would still have a case for discrimination:

> THE COURT: Let's assume it goes back to the agency and **it agrees with your position.** Still going to have this issue of **discrimination in this Court. Right?**
> MR. GUERRA: **You would, your Honor. I believe you would**.
> THE COURT: So we would then –

However, Judge Bassler made an error there as well. The FCC 2003 Decision advised that issues of **discrimination** are to be determined by the **District Court,** because it is a fact-based issue – not a tariff interpretation issue. So, Judge Bassler should have simply decided the case against AT&T in 2005 based on discrimination, as his Court did recognize AT&T had zero evidence to show revenue and time commitments transferring on traffic only transfers under section 2.1.8.

AT&T filed TR 8179 on February 16th 1995 to retroactively change the terms and conditions of section 2.1.8 so it could **subjectively discriminate** when it can decide that a substantial traffic only transfer required a PLAN TRANSER to force the revenue and time commitments to transfer.

Therefore, with Tr8179, the FCC had already ruled against AT&T's ability to **discriminate** based upon the percentage of the locations being transferred. Under 2.1.8 there is no sliding scale of which obligations transfer based upon the percentage of locations transferred.

As AT&T's own counsel Fred Whitmer stated during Judge Politan Oral argument in 1995---if the home/lead account stays with the non-transferred plan ---even if every other location is transferred ---it is still a traffic only transfer ---and the revenue and time commitments and their associated obligations for shortfall and termination changes---- must stay with the non-transferred plan. Either your pregnant or you're not—not "well it was almost a plan transfer."

In addition to the evidence cited in Judge Politan's March 1996 decision--- 6 additional certifications have been filed with the FCC from other AT&T aggregators. All of them certified that for traffic only transfers the non-transferred plans revenue and time commitment do not transfer. Judge Wigenton was also provided these 6 additional certifications.

Based upon the misrepresentation of AT&T's counsels Judge Bassler referred a **brand-new controversy** to the FCC to determine "which obligations transfer on a 2.1.8 traffic only transfer."

AT&T and the Inga Companies have always agreed that 2.1.8 allowed traffic only transfers--- so **there was no controversy or uncertainty regarding whether 2.1.8 allowed traffic only transfers** at the time of the January 1995 traffic only transfers.

From 1995 to 2005 AT&T asserted revenue and time commitments do not transfer ---as it had to concede that under 2.1.8 tariff the revenue and time commitment did not transfer to assert its sole defense of fraudulent use under section 2.2.4.

AT&T's brand new post DC Circuit assertion in 2005 was revenue and time commitments MUST TRANSFER on a traffic only transfer---and amazingly AT&T knows it was a lie and of course it knew it was putting itself in a situation where it had **zero evidence** to support the new nonsense.

Obviously if revenue and time commitments transferred, AT&T would have many thousands of examples. If AT&T's assertion were true, all AT&T would have to do is say: "Here your Honor see how all traffic only transfers have the revenue and time commitments transfer."

But of course, no evidence exists. AT&T's counsels intentionally decided to engage in a fraud on the District Court Judges Bassler and Judge Wigenton and tried to cover it up with "all obligations of the OLD PLAN & The Transferor" fraud on the FCC in 2007.

Judge Bassler did understand that section 2.1.8 allowed traffic only transfers as was the position of AT&T and petitioners---so there was no controversy regarding 2.1.8 allowing traffic only transfers.

But Judge Bassler refers the brand-new controversy of which obligations transfer under 2.1.8 to the FCC and a FCC filing was done in December 2006. The FCC releases on January 12th 2007 its Order that case manager Deena Shetler said she wrote for Thomas Navin who was the department head of the FCC Pricing Line Division. The key part of that Order is here:

> "As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary **to terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act. That is our goal here. **The district court's June 2006 order does not expand the scope of the issue previously presented.** Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No.2, a matter already **extensively briefed by the parties**." FCC Jan 12th 2007 Order Pg. 2 para 3 Exhibit B

The FCC clearly understood that Judge Bassler's 2006 referred controversy and uncertainty regarding which obligations transfer under 2.1.8, **"does not expand the scope of the issue previously presented".** The original 1995 controversy was AT&T's bogus assertion that it had the right to prohibit a permissible 2.1.8 transfer based upon section 2.2.4. fraudulent use.

The FCC is saying that 2.1.8 **extensively briefed by the parties** is saying the parties have agreed that 2.1.8 allows traffic only transfers. This is not a controversy the FCC needs to decide!

The FCC 2007 Order determined this 2006 AT&T created new controversy of which obligations transfer was outside the scope of the case and was thus moot. The FCC was not going to allow AT&T to create a brand-new controversy in the YEAR 2005 in Judge Bassler's Court, to justify why it denied the traffic only transfer in the YEAR 1995.

The case just sits at the FCC and of course the FCC doesn't do anything with it as the case is moot! Petitioners bring the case back to the NJ Federal District Court where Judge Wigenton has assumed the case from Judge Bassler.

So, it is now 22 years and 3 NJFDC Judges. As detailed previously AT&T replaced the failed Tr. 8179 retroactive attempt to change the terms and conditions of section 2.1.8 by filing Tr. 9229. That Tr9229 tariff page **explicitly** detailed for Judge Wigenton that AT&T's post DC Circuit assertion that the revenue and time commitment must transfer was bogus.

AT&T changed section 2.1.8 in late 1995 so when substantial traffic was transferred the transferring customer had to post security deposits against potential shortfall of its revenue commitment---because those commitments stayed with the non-transferred plan!

The TR9229 tariff page was explicit that AT&T's new controversy was nonsense. AT&T of course was still pulling off the fraud despite having no evidence of the new assertion that revenue and time commits transfer.

AT&T counsel Richard Meade certified to Judge Politan in 1996 that plan obligations did not transfer. AT&T counsel Meade provided the TR 9229 explicit tariff page indicating AT&T was changing 2.1.8 to add security deposits against potential shortfall. Remember the Tr.9229 was the replacement for Tr8179 in which AT&T conceded 2.1.8 did not require revenue and time commitments to transfer and thus AT&T was trying to retroactively change 2.1.8.---so when substantial locations were transferred the plan would transfer—and the FCC denied it.

Petitioners presented this Tr9229 explicit tariff language to Judge Wigenton. How would AT&T get away with convincing Judge Wigenton that the plan obligations transfer when the plain language of the terms and conditions for 2.1.8 show and AT&T's own counsel conceded **they do not transfer?**

AT&T simply lied to Judge Wigenton that the tariff language **did not apply** to the Inga Companies! WHAT? AT&T incredibly stated that because the Inga Companies were grandfathered from having to post the security deposits against potential shortfall, the tariff did not apply!

AT&T counsel scammed Judge Wigenton into believing that the fundamental terms and conditions of section 2.1.8 that the revenue and time commitments don't transfer did not apply to the petitioners. Obviously, just because the Inga Companies were grandfathered from having to post security deposits, certainly does not mean the fundamental terms and conditions of the tariff section 2.1.8 did not apply! Again AT&T is pulling off this intentional fraud with **no evidence** to support it –as all the evidence shows the revenue and time commitments DON'T TRANSFER!

Meade certification to Judge Politan pg.7 para 16

> The Deposit for Shortfall Charges included in Transmittal No. 9229 is a **"new concept"** that meets **AT&T's business concern** more directly, without addressing the question of **intent.** Because this is **new,** it will **apply** only to newly ordered term plans, and so would **not be determinative** of the issue presented on the **CCI/PSE transfer**.

AT&T counsel Meade was just saying security deposits did not apply because it was only for newly ordered plans----Meade did not say that the basic terms and conditions of section 2.1.8 no longer applied.

Of course, the basic terms and conditions still apply. The very reason AT&T instituted Tr9229 on a prospective basis was because revenue and time commitments don't transfer on a traffic only transfer. Tr 9229 used a mathematical formula to decide how much security deposit needed to be posted by comparing **the remaining revenue commitment** compared to the revenue that remained---i.e. did not get transferred on the non-transferred plan. The only fraud AT&T counsels have not tried yet is to manufacture actual evidence of traffic only transfers in which the revenue and time commitment transfer.

In 2015 AT&T advised Judge Wigenton that AT&T would **not oppose** petitioners seeking from the DC Circuit Court a writ of mandamus to force the FCC to resolve Judge Bassler's 2006 referred controversy of which obligations transfer under 2.1.8.

AT&T counsels understood the case was over when the DC Circuit Court ruled against it ----so AT&T counsel were more than happy to tell Judge Wigenton that AT&T will not oppose an FCC resolution of the 2006 created controversy over which obligations transfer under section 2.1.8.

Judge Wigenton Oral Argument: March 18, 2015

> JUDGE WIGENTON: PAGE 15
> "So I'm going to deny the request for lifting of the stay. I would strongly suggest, cannot direct you to do it, but I would strongly suggest that mandamus be sought. **The defense has indicated that they would not oppose such a filing** and I hope that they would maintain their word and not do so because I think everyone **needs a resolution here.** And as counsel stated for the plaintiff, at some point the day of reckoning has to occur. And I think that day is definitely upon us."

Judge Wigenton wanted a resolution at the FCC to decide Judge Bassler's "which obligations transfer under 2.1.8" referral. However, the FCC already issued an Order January 12th 2007 stating "**The district court's June 2006 order does not expand the scope of the issue previously presented."**

It was nothing more than an AT&T counsel trap. AT&T counsels knew that the DC Circuit Court would never mandate that the FCC should be forced to resolve a moot issue! The DC Circuit Legal Director Martha Tomich stated that if AT&T had a problem with the non-remanded decision to deny its sole defense of fraudulent use, it was incumbent upon AT&T to have appealed the DC Circuit Decision. The DC Circuit can only review what the FCC was asked to interpret. Of course the District Court never sent a referral to the FCC asking it to resolve which obligations transfer—as the parties had all agreed the obligations don't transfer.

Petitioners understood that the January 12th 2007 FCC Order properly determined that Judge Bassler's 2006 referral did not expand the scope of the fraudulent use controversy and was thus **moot.** Judge Wigenton believed it was fathomable that the FCC would not get around to interpreting Judge Bassler referral since 2006; when in reality the FCC's position has been that this new controversy regarding "which obligations transfer under 2.1.8" is **moot** as it had nothing to do with the original fraudulent use controversy under section 2.2.4.

The confusion has been that AT&T used section 2.2.4 as its defense to prohibit a permissible 2.1.8 traffic only transfer.

So, petitioners filed a motion at the FCC to simply ask the FCC to reissue its FCC Jan 12th 2007 Order. The goal was to make it explicit for Judge Wigenton that the controversy of which obligations transfer under 2.1.8 is a moot issue.

AT&T understands the FCC's January 12th 2007 Order determined Judge Bassler's 2006 referral was moot and **decided to oppose resolution** of Judge Bassler referral. Judge Wigenton wanted resolution of the issue and the FCC advising her Court that this was a moot issue, would have given Judge Wigenton exactly the resolution her Court wanted:

> Judge Wigenton: "**The defense has indicated that they would not oppose such a filing** and I hope that they would maintain their word and not do so because I think everyone **needs a resolution here."**

A clarification of the FCC 2007 Order would have advised Judge Wigenton that the ONLY CONTROVERSY between the parties that was created in 2006 –regarding which obligations transfer is moot as it did not expand the scope of the original fraudulent use referral.

So, AT&T decided to oppose FCC resolution **despite having advised Judge Wigenton that it would not oppose FCC resolution.** Obviously, if AT&T really believed the FCC's January 12th 2007 Order meant the FCC needed to determine the 2005 created controversy of which obligations transfer under 2.1.8—AT&T would not have opposed. AT&T counsels knows it's not the case that the FCC simply has not gotten around to interpreting which obligations transfer controversy in 11 years!

The original controversy of fraudulent use has been decided against AT&T. There has never been any controversy or uncertainty between AT&T and Petitioners as to whether section 2.1.8 allows traffic only transfers.

Judge Bassler's question on which obligations transfer, **in and of itself**, is understanding that 2.1.8 allows traffic only transfers ---his Courts only controversy was precisely which obligations transfer. The DC Circuit of course also understood that 2.1.8 allowed traffic only transfers.

FCC Jan 12th 2007 Order Pg. 2 para 3 Exhibit B

> "As discussed in the 2003 Order on Primary Jurisdiction Referral, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary **to terminate a controversy or remove uncertainty**. When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act. That is our goal here.

Under the **Administrative Procedure Act** the Commission only interprets **controversies and uncertainties** from the District Court. There is no controversy or uncertainty between AT&T, petitioners, Judge Bassler, and DC Circuit Court that section 2.1.8 allowed traffic only transfers.

It's not the FCC's place to interpret **non-controversies**. The only controversy between the parties is AT&T's 2006 created controversy, that 2.1.8 mandates the revenue and time commitment must also transfer on a traffic only non-plan transfer ---which of course is total nonsense to begin with---- and outside the scope of the original 1995 fraudulent use controversy in any event.

Judge Wigenton major barrier was the case was sent from the Pricing Line Division into FCC Commissioner **CIRCULATION** back in November of 2015. The FCC Commissioners have now **REMOVED THE CASE from FCC Commissioner Circulation—because it has been determined as moot.**

The FCC Commissioners are aware that under the Administrative Procedures Act it should not be deciding anything other than the referred controversy in 2006 regarding which obligations transfer and that controversy is outside the scope of the case.

While the case was on Circulation AT&T had its Washington DC office make numerous personal visits to the FCC imploring the FCC Commissioners to interpret Judge Bassler's obligations question. Imagine the Defendant in a case can't wait for the FCC to decide it! Of course AT&T counsel wanted the FCC to decide it as it didn't want the Commissioners to decide it was a moot issue—AT&T already lost back in 2005!

AT&T is not entitled to another decision. AT&T can't create a NEW CONTROVERSY IN THE **YEAR 2005** as its JUSTIFICATION why it denied the traffic only transfer **IN THE YEAR 1995!** Incredibly, this is what AT&T is asking they FCC to do! Not only is AT&T's new "all obligations must transfer" assertion a total unsubstantiated fraud, AT&T wants to further delay this 22-year-old case.

The FCC Pricing Policy Division **has already referred AT&T counsels "all obligations" fraud to the FCC Ethics staff**. The FCC would not have sent a pending issue to the FCC ethics staff unless it had already determined that AT&T's 2005 created controversy of which obligations transfer under 2.1.8 was moot---as it did not expand the scope of the original 1995 controversy over fraudulent use under section 2.2.4.

The NJFDC in March **1996** after additional certifications and evidence determined that 2.1.8 allowed traffic only transfers and AT&T's sole defense of fraudulent use had no merit; as the plans were pre-June 17th 1994 grandfathered. The 1996 NJFDC decision was vacated only on primary jurisdiction grounds, not based upon a NJFDC error. What was referred by the Third Circuit to the FCC in 1996 was the former fraudulent use controversy of 1995, which Judge Politan by 1996 determined had no merit—because the plans were pre June 17th 1994 ordered!

Imagine AT&T counsels introducing an intentional fraud that is so detectable that a Judge could simply tell a clerk--- Go call AT&T customer service and ask AT&T if revenue and time commitments transfer when the plan doesn't transfer.

Petitioners sent Mr. Brown an email last month that was copied to all FCC Staff, and stated that petitioners **would drop the case** if AT&T could produce 1 single traffic only non-plan transfer in which the non-transferred plans revenue and time commitment transferred.

AT&T counsel Richard Brown confirmed receipt but of course did not respond, as no evidence exists. Mr Brown along with several other AT&T counsels decided to intentionally engage in a fraud and then tried to cover-up the fraud with more comical and absurd lies.

It wasn't just AT&T counsel that intentionally lied and violated AT&T' Tariffs. AT&T's in house counsel Edward R. Barrillari advised the AT&T order processing department to **no longer** process any 2.1.8 traffic only transfers.

Petitioners traffic only transfer was unlawfully denied in January 1995. As evidenced above AT&T tried via Tr8179 to retroactively change the terms and conditions for section 2.1.8 and the FCC denied the request. AT&T counsel Meade certified that AT&T prospectively changed 2.1.8 with Tr9229 mandating security deposits against potential shortfall---- when substantial traffic was transferred away from the revenue commitment—which of course stayed with the non-transferred plan.

So, what did AT&T do from January 1995 until November 1995 to stop the transfer from 28% to 66% discount? It simply violated its tariff and decided that section 2.1.8 no longer allowed traffic only non-plan transfers.

AT&T order processing manager Ms. Joyce Suek's in June 1995 uses of the term "Partial TSA's" means "traffic only" transfers under 2.1.8 **T**ransfer **S**ervice **A**greement (TSA).

> Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity. Additionally, **we "no longer" process partial TSA's, the TSA must be for the whole plan.**

"No longer" obviously means AT&T had been allowing 2.1.8 transfers but stopped.

There are two points that need to be addressed due to shutting down 2.1.8:

A) Even if Judge Bassler's referral question on which obligations transfer was considered it would be **moot,** because AT&T totally shut down 2.1.8 traffic only transfers, no matter which obligations were being transferred.

B) The fact that AT&T shut down 2.1.8 for traffic only transfers also attacks AT&T's sole defense of fraudulent use. Under fraudulent use, section 2.2.4, AT&T claimed it has the right to suspect petitioners would not be able to meet its revenue commitment once substantial traffic was transferred to PSE.

Since AT&T shut down 2.1.8 to all traffic only transfers----- there was **no way to transfer less traffic** as AT&T subjectively and self-servingly claimed too much traffic was being transferred. Even if the FCC and DC Circuit had determined that AT&T had the right to rely upon 2.2.4 fraudulent use due to too much traffic being transferred, AT&T would still be in violation as it used an **illegal remedy** as there was no way to comply by transferring less traffic.

Given the fact that AT&T used an illegal remedy by stopping all traffic only transfers is additional evidence to prove the Judge Bassler referral on which obligations transfer is a **moot issue** as it didn't matter which obligations transfer –AT&T was not allowing use of 2.1.8 at all for traffic only transfers. Furthermore, the FCC has already denied Tr.8179 determining AT&T no right under 2.1.8 to mandate the plan must transfer due to substantial traffic being transferred.

AT&T Counsel Fash July 7th 1995 also went with the scam that 2.1.8 didn't allow traffic only transfers.

> "I will address the "partial TSA" issue first in general and then with your clients express and announced intentions. The Transfer of Service provision of the tariff addresses the issue of **transfer of service, not transfer of traffic** by moving individual locations from one plan to another. The proper way to move traffic (i.e. a subset of locations on a plan) between plans is to submit service orders **to delete the locations from one plan and add the locations to another."**

Up until petitioners traffic only transfer in January 1995, section 2.1.8 always allowed traffic only transfers. No language in the tariff changed. AT&T counsel Fash advised to move the accounts (traffic only) by deleting from the former customer plan and adding them to the new customer plan using section 3.3.1.Q bullet 4. However, AT&T would not allow petitioners to that either claiming fraudulent use---even though the plans were immune from the shortfall that AT&T claimed it suspected---fraud upon fraud upon fraud.

When Tr. 9229 went into effect AT&T went back to its position that 2.1.8 does allow traffic only transfers and revenue commitments don't transfer but now you must post security deposits against potential shortfall. You may ask yourself –Why then at that point in late 1995 did AT&T not transfer the traffic having conceded the security deposits under Tr9229 did not apply to petitioners because they were grandfathered? It did not make a difference what law or logic was presented to AT&T. There was simply no way AT&T was moving $54 million of traffic and discounting it by an additional 38%. It was all about the money!!!

What is causing two of the largest and most respected law firms in the United States (Sidley Austin & Day Pitney) to work in concert with in house AT&T counsel to intentionally engage in an intentional fraud on multiple Federal Judges and the FCC?

This case involves $54 million dollars that was denied an additional 38% discount back in January 1995—over $20 million **per year**. Not including interest, and legal fees.

In addition, there may be many other aggregators that were unlawfully were put out of business by AT&T. A resolution of this case may provide a two-year window for many other aggregators to file suits --------so you can understand why AT&T counsels are willing to go far beyond advocacy and intentionally engage in an intentional fraud on the NJFDC and the FCC.

AT&T counsel Mr. Richard Brown III in 1996 advised the Third Circuit Court that it was **"self-evident"** under the tariff that the revenue and time commitments **do not transfer**. Now Mr Brown is stating that under section 2.1.8 these commitments have always transferred---but of course all the evidence and tariff law conclusively shows otherwise.

It is apparent that if AT&T corporate keeps paying Mr Brown several hundred thousand a year Mr. Brown will continue his fraud on Judge Wigenton. Can you imagine if Judge Wigenton asks Mr Brown—How come you have had the opportunity to present evidence of AT&T's assertion that the revenue and time commitments transfer on a traffic only transfer and you have no evidence; despite your own counsel Whitmer stating AT&T has done thousands of traffic only transfers? Do Richard Brown and Joseph Guerra believe they will be able to scam Judge Wigenton again? We shall soon see.

Incredible that AT&T's counsels have been able to delay justice for 22 years. The State Ethics staffs for NJ, DC Circuit Court, DC Bar Counsel and the FCC Ethics Staffs are all involved.

The FCC case manager Deena Shetler advised petitioners that even when a case is moot it is still substantive, until over. So, the issue has been that ethics staffs can't proceed with an ethics investigation, even when the issue is moot.

The Commissioners have reviewed the AT&T fraud since going into circulation in November of 2015 and have now removed it from circulation. The Commissioners understand that AT&T's

fraudulent use defense has already been denied. The Commissioners also understands that there has never been a controversy over whether section 2.1.8 allows traffic only transfers.

The DC Circuit understood 2.1.8 allowed traffic only transfers. Additionally, Judge Bassler in 2006 referral obviously understood and agreed with AT&T and petitioners that 2.1.8 allowed traffic only transfers.

Judge Bassler's only issue was which obligations transfer---and that is an issue outside the scope of the original controversy. Since under the Administrative Procedures Act the Commission ONLY RESOLVES CONTROVERSIES the FCC removed the traffic only transfer case from circulation.

Judge Wigenton's "circulation" barrier is now lifted and her Court can lift the stay and get on with damages. Also, the State Ethics staffs can pursue AT&T counsel's intentional frauds.

There is another controversy before the FCC, that being the penalty infliction in June 1996 that took place 18 months after the denied traffic only non-plan transfer. Petitioners will ask Judge Wigenton whether the FCC must interpret this issue.

The Commission on August 11th 2016 asked for public comment regarding declaratory rulings dealing with controversies of the duration a customer can restructure a Pre-June 17th 1994 ordered CSTPII/RVPP discount plan. Additionally, other declaratory rulings were involved that evaluated AT&T's failure to the meet the Substantial Cause test mandated by the October 1995 FCC Order. AT&T has opposed the resolution of the shortfall infliction despite advising Judge Wigenton that it would not oppose FCC resolution.

The facts in this case are that even after the May 1995 Judge Politan Decision in which the Inga plans were transferred to Combined Companies Inc. (CCI) -----the Inga Companies continued to maintain full LETTER OF AGENCY status on all end-user locations.

AT&T acknowledged this and that is why the Inga Companies office continued to service the end-users after the May 1995 plan transfer to CCI. So, whether CCI's plans in June 1996 were unlawfully hit with shortfall and termination charges did not affect the Inga Companies ability to move the end-users to another plan or for the Inga Companies to subscribe to a new CSTPII/RVPP plan that offered the 28% discount it had been receiving but with only a $600,000 per year commitment instead of $50 million.

After AT&T unlawfully hit those end-user locations with massive penalties more than the discount those end-users were provided. The end-user business locations were advised by AT&T that it was petitioners fault. This in a practical sense destroyed the business relationship the Inga Companies had with its customers.

So, while the Inga Companies could move the accounts and did not need the plan that was hit – the unlawful penalties destroyed the relationship. Obviously if AT&T had moved the traffic the end-users **would not have been left on the plan to get hit.**

So, the issue of whether Judge Wigenton needs to have the penalty infliction issue resolved will be her Court's call.

At this point the traffic transfer issue has been reviewed by the Commissioners. The Commissioners properly determined that there are no controversies referred by Judge Bassler within the scope of the original referral.

The FCC has thus pulled the case from circulation. Petitioners have successfully shown there are no controversies within the scope of the case. Additionally, the discrimination issue under 202 of the 1934 Communications Act is a fact issue the NJFDC must deal with.

It's obvious that all other AT&T customers transferred traffic under 2.1.8 without the plan transferring and the revenue and time commitments did not transfer. All the evidence in the case shows this! This is blatant discrimination which Judge Wigenton must rule against AT&T.

So, petitioners are going back to the NJFDC now that the case is off circulation. Judge Wigenton may also want to address why AT&T advised her Court that it would not oppose resolution of the case and opposed it! Imagine AT&T counsels not wanting the FCC to simply clarify an existing FCC order—what does that tell you! AT&T knew all along the case was moot—but engaged in an intentional fraud on the NJFDC and FCC!

Al Inga

Group Discounts, Inc.